

**IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**SUSAN CASSIDY A/N/F
ERNEST CASSIDY**

Plaintiff,

v.

**DEPARTMENT OF VETERAN
AFFAIRS**

Defendant.

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CIVIL ACTION NO. 5:22-cv-00652

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Susan Cassidy A/N/F Ernest Cassidy complains of Defendant Department of Veteran Affairs (hereinafter, "Defendant"), and would respectfully show the Court that:

Jurisdiction and Venue

2. The claims asserted arise under the Federal Tort Claims Act and common law of Texas. This Court has jurisdiction pursuant to 28 U.S. Code § 1346 (b)(1) and venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in Bexar County, Texas.

Parties

4. Plaintiff Susan Cassidy A/N/F Ernest Cassidy is an individual residing in Bexar County, Texas.

5. Defendant, Department of Veteran Affairs of the United States, (hereinafter "Defendant"), is a federal entity engaged in business in Bexar County, Texas. Defendant may be served with process by (1) delivering a copy of the summons and complaint to the United States attorney for the district where the action is brought—or to an assistant United States Attorney or clerical

employee whom the United States attorney designates—or sending a copy of each by registered or certified mail to the civil-process clerk at the United States Attorney’s office; and (2) sending a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.

Facts

6. This lawsuit is necessary as a result of personal injuries that Plaintiff received on or about July 20, 2021. At that time, Plaintiff Ernest Cassidy was an invitee at Defendant’s clinic, Datapoint VA Clinic, at 8410 Datapoint Drive, San Antonio, Texas 78229, in Bexar County, Texas. Plaintiff Ernest Cassidy was exiting the facility when he was struck by the automatic doors closing at the exit. The impact caused Plaintiff Ernest Cassidy to dislodge him from his walker, to lose his balance, and fall on the ground. The fall caused Plaintiff Ernest Cassidy to suffer severe injuries. There were no warning signs present or any other signs of caution near the area where the incident occurred. Plaintiff was not aware of the dangerous and defective condition.

7. At the time of the incident in question, Plaintiff was an invitee to the Defendant. Defendant knew or should have known of the unreasonably dangerous condition and neither corrected nor warned Plaintiff of it. Plaintiff did not have any knowledge of the dangerous condition and could not have reasonably been expected to discover it. Defendant either created the condition and/or failed to correct the condition or to warn Plaintiff about the dangerous condition, which constituted negligence, and such negligence was a proximate cause of the occurrence in question and Plaintiff’s resulting injuries.

8. Plaintiff would show that, based on the above-described facts, Defendant was negligent. Defendant, as occupier and owner of the premises, with control over the premises, had a duty to

inform Plaintiff of the dangerous condition and make the defective condition existing on Defendant's premises safe.

9. Defendant is liable to Plaintiff under the theory of premises liability and negligence based on the following negligent conduct:

- a. Failure to maintain the premises, including doors, floor, and walkways, in a reasonably safe condition;
- b. Failure to inspect the premises where the dangerous condition existed;
- c. Failure to correct the condition by taking reasonable measure to safeguard persons who entered the premises;
- d. Failure to inform Plaintiff of the dangerous condition existing on the premises; and
- e. Other acts deemed negligent.

10. Each of the foregoing negligent acts and/or omissions, whether taken singularly or in any combination, was a proximate cause of Plaintiff's injuries and damages that are described below.

11. Defendant was also negligent in that it failed to act as a reasonably prudent premise owner would act in the same or similar situation.

Damages

12. As a result of these acts or omissions, Plaintiff sustained damages recognizable by law.

13. By virtue of the actions and conduct of Defendant as set forth above, Plaintiff was seriously injured and is entitled to recover the following damages:

- a. Past and future medical expenses;
- b. Past and future pain, suffering and mental anguish;
- c. Past and future physical impairment;
- d. Past and future physical disfigurement; and
- e. Past lost wages and future loss of earning capacity.

14. By reason of the above, Plaintiff is entitled to recover damages from Defendant in an amount within the jurisdictional limits of this Court, as well as pre and post-judgment interest.

Jury Demand

15. Plaintiff requests a trial by jury.

Prayer

Plaintiff prays that this citation issues and be served upon Defendant in a form and manner prescribed by law, requiring that Defendant appears and answers, and that upon final hearing, Plaintiff has judgment against Defendant in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre and post-judgment interest, all costs of Court, and all such other and further relief, to which she may be justly entitled.

Respectfully submitted,

DASPIT LAW FIRM

/s/ Michael H. Garatoni

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2022, the above and foregoing document was filed with the Clerk of the Court using the CM/ECF system, and that this instrument is therefore available for viewing and downloading from the Court's ECF system.

Dated: June 14, 2022.

By: /s/ Michael H. Garatoni
Michael H. Garatoni

ATTORNEY FOR PLAINTIFF